IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 134 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KALIDAS RAMESH VASAVA & 2 - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MS FARHANA Y MANSURI for Appellant(s) : 1 - 3.
MR KT DAVE, APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 18/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE KS JHAVERI)

1. By way of this appeal, the appellants-original applicants no. 1, 2 & 3 have challenged the judgement and order dated 27.11.2003 passed by the Additional Sessions Judge, Bharuch(4th Fast Track Court) at Rajpipla in Sessions Case No. 124 of 2002 whereby the appellants who are convicted for commission of offences punishable under Sections 306, 498-A and 114 Indian Penal Code are each sentenced to suffer R.I for ten years and fine of Rs. 2,000/- in default S.I for six months for having committed offence punishable under sections 306 read with 114 of Indian Penal Code as well as R.I for three years and fine of Rs. 1,000/- in default R.I for three months for having committed offence punishable under section 498-A read with 114 of Indian Penal Code.

2. The case of the prosecution is that one Shri Bhupatsing Mansing Vasava residing at Navagam Taluka, Narmada lodged a complaint on 13.07.2002 interalia

stating that his daughter-Bhavnaben, aged about 16 years, was kidnapped on 14.02.2001 from school. His wife-Champaben had lodged a complaint in that respect on 26.03.2001 vide C.R No. 36/2001 with Rajpipla Police Station wherein she has accused the present appellants namely Kalidas Rameshbhai Vasava, Sangaliyabhai Prahladbhai Vasava and Vanitaben Jayantilal Vasava for the said abduction. Shri Bhupatsing has submitted that after the said kidnapping he has not received custody of his daughter nor heard any word from her.

2.1 Thereafter, on 13.07.2002 he was informed that his daughter has died and, therefore, he reached his native village immediately. After the postmortem was conducted on the daughter of the complainant, it was stated that the reason of her death is consumption of some poisonous drug. The complainant stated that on 10.07.2002 and 11.07.2002 his wife Champaben-mother of the deceased Bhavnaben received telephone calls from the deceased Bhavnaben on the telephone number of one Shri Rameshbhai and the deceased had informed her mother that the appellants are beating and torturing her physically and mentally and are also threatening to kill her. The deceased on telephone had also informed that she wanted her mother to take her back to her parental house.

2.2 After hearing this Champaben-mother of deceased and wife of complainant is stated to have told the deceased that she will come to pick her up on the next day i.e 12.07.2002. However, the next day, Champaben was informed by the Rajpipla Police Station that her daughter has committed suicide by consuming some poisonous drug. The complainant has stated that physical and mental torture was meted out on the deceased by the appellants and she was also raped by the accused no.1.

3. To prove the case of the prosecution, the prosecution has examined 19 witnesses out of which 11 witnesses turned hostile. The prosecution has examined complainant-Bhupatsing Mansing Vasava-PW1. The deponent has stated that on 12.07.2002, while he was on duty at Railway Police Station at Ahmedabad, he was informed that his daughter has died. Therefore, he came down to his village Navagam immediately. By that time, the postmortem was done and the cause of death was stated to be consumption of poisonous drug. The witness has stated that his daughter was earlier abducted on 14.02.2001 by the accused no.1 and the accused nos. 2 & 3 abetted him in the said abduction. A criminal complaint to that effect was also lodged at Rajpipla Police Station which

was registered as C.R. No. 36/2001.

3.1 The witness has further informed that his wife Champaben had received telephonic calls on the telephone number of one Shri Rameshbhai on 10.07.2002 and 11.07.2002 and the deceased daughter informed her mother that she was being subjected to physical and mental torture by one Kalidas Vasava-appellant no.1, his grandfather-appellant no.2 and his mother-appellant no.3. It is further stated by the witness that during the said talk with the deceased, Champaben-his wife and mother of deceased had assured the deceased that she shall reach the place where the deceased lived on 12.07.2002 and the deceased would be brought home. However, the next day i.e on 12.07.2002 Champaben was informed that her daughter has died and the body was handed over to her after post-mortem. The witness has also stated that the deceased was pregnant due to rape committed on her by the appellant no.1-Kalidas and apart from that she was also subjected to physical and mental harassment by the appellants. The complaint was signed by the witness-Bhupatsing and he has identified all the three appellants.

3.2 In the cross-examination, the witness has admitted

that he was not in touch with his daughter since the day she was abducted and that he was not informed about any torture or harassment meted out to her by the appellants before 12.07.2002. The witness has submitted his complaint to the Dy.S.P. It is also admitted that he came to know about the pregnancy of his daughter only after the postmortem was carried out. Thereafter, the last rites were said to be done on 13.07.2002.

4. The prosecution has thereafter examined Champaben-wife of the complainant-deponent no.1 and mother of the deceased. She has stated that she had lodged a complaint on 26.03.2001 vide C.R No. 36/2001 with Rajpipla Police Station wherein she has accused the present appellants namely Kalidas Rameshbhai Vasava, Sangaliyabhai Prahladbhai Vasava and Vanitaben Jayantilal Vasava of abducting her daughter Bhavnaben. She has stated that on 10.07.2002 and 11.07.2002 she received telephone calls from the deceased Bhavnaben on the telephone no. of one Shri Rameshbhai and the deceased had informed her that the appellants are beating and torturing her physically and mentally and also threatening to kill her. The deceased on telephone had also informed that she wanted her mother to take her back to her parental house. After hearing this it is stated that Champaben told the

deceased that she shall come to pick her up on the next day i.e 12.07.2002.

4.1 However, the next day, Champaben was informed by the Rajpipla Police Station that her daughter has committed suicide by consuming some poisonous drug. Thereafter, Champaben alongwith son-in-law went to the Government Hospital, Rajpipla where she was handed the body of the deceased after postmortem. It is stated by the witness that she then approached the police station and informed her husband about the death of their daughter. She has stated that due to physical and mental torture meted out on the deceased by the appellants and also due to the rape by the appellant no.1, the deceased consumed poison.

4.2 The muddamal articles were identified by Champaben and she has also stated that the complaint was lodged by her husband. She has admitted that on 11.07.2002 no one from her house had gone to meet the deceased Bhavnaben. It was also admitted that during the period of her abduction to the last telephonic call received they had no whereabouts of the deceased. Champaben has also admitted that though she had received a telephone call on 10.07.2002 from her daughter who was alleged to have been abducted, she did not inform the police about the same

even though the complaint regarding abduction was pending before the Rajpipla police station. It has also been admitted by Champaben that she had not informed her husband-the complainant regarding the fact that she had received telephone calls from the deceased on 10.07.2002 and 11.07.2002. She has admitted that her husband was informed about the same only after the death of the daughter was informed to him.

5. It may be noted that Champaben has admitted that the distance between Vanghetha village(the place where the deceased used to stay with the appellants) and Navagam village(the place where the parents of the deceased resided) is only about 14 kms which can be said to be about one hour distance even by walk. Champaben has denied of concocting any story regarding mental and physical harassment meted out to the deceased or regarding the pregnancy of the deceased attributed to be by Kalidas.

6. The prosecution has thereafter examined PW3-Gitaben Sundarbhai who is the neighbour of Rameshbhai at whose place the deceased had telephoned. However, the said witness was declared hostile. The prosecution has also examined Champaben Sangliyabhai-PW 4. She is the

grandmother of accused no.1, wife of accused no.2 and mother of accused no.3. She has informed that on 12.07.2002 while her husband Sangaliyabhai and her grandson Kalidas had gone to the farm for farming at that time, Bhavna and herself were at home.

6.1 She has informed that the younger sister of the deceased, name not known to Champaben, had come to the residence of Champaben and the deceased from Navagam. Champaben was requested to let the deceased Bhavnaben accompany her sister. It is also stated that Champaben had told the deceased that since her parents were not on talking terms with the deceased and the family of the accused, there was no necessity of the deceased going to her parental home. However, it is stated that Champaben had informed the deceased that she could go to Navagam after the accused no.1-Kalidas comes home. The sister of the deceased thereafter returned to Navagam and the deceased went to the bus stop to drop her. Champaben has stated that the deceased then returned to her house and thereafter Champaben left the house for grazing cattle. It is stated that Champaben returned home at around 1730 hours and on not finding the deceased home she inquired with the neighbour Rajliben about the whereabouts of the deceased. Rajliben had informed Champaben that she had

seen the deceased Bhavnaben going towards Amli with a bag of clothes in her hand. Champaben has informed that hearing the said fact from the neighbour she immediately rushed for finding the deceased.

6.2 It is stated that at about 1-1/2 kms from their house, Champaben saw the deceased lying on the floor with white fizz coming from her mouth. She has stated that the deceased was restless and a foul smell of medicine was coming from the mouth of the deceased. The deceased had at that time informed Champaben that she had consumed poison since she was not allowed to visit her parental home. After saying this the deceased passed away. Champaben has stated that thereafter she came home and informed her husband and grandson and they all rushed to the place of the incidence.

7. The prosecution has also examined PW-5 Shuklabhai Abdalbhai and he has also been declared hostile. He was witness to inquest panchnama. The other witness PW-6 Vinodbhai Chottubhai who was also examined by the prosecution also turned hotile. He too was a witness to the inquest panchnama.

8. The prosecution has thereafter examined Gajraben

Rameshbhai- PW7 who is of the same age as the deceased. She has stated that there is a telephone at her house on which the deceased had called on 11.07.2002. She has stated that prior to 11.07.2002, the deceased had telephoned on 10.07.2002 and requested to call her mother on the phone. However, it was Gitaben who attended the call and she was informed by the deceased that her mother may be informed that the deceased was having stomach ache. Thereafter, on 11.07.2002, in the morning the deceased again called on the same telephone number to speak to her mother. However, since her mother Champaben was not home, the deceased was asked to call in the afternoon. The deceased Bhavnaben accordingly telephoned in the afternoon.

8.1 At that time, it is stated that Champaben-mother of the deceased came to the house of the witness Gajraben Rameshbhai to talk to her daughter accompanied by her younger daughter Sonal. It is stated that amidst the talk with the deceased, the mother of the deceased Champaben came to know that her daughter Bhavnaben was being physically and mentally harassed by the accused no.1 and his family members and that her daughter was pregnant. Gajraben has stated that Champaben had informed the deceased that she will be sending her

younger daughter Sonal, the sister of the deceased, to pick her up. It is also stated that however on the next day the police came to the house of Champaben the mother of the deceased and informed her about the death of her daughter Bhavnaben. After receiving the said information, Champaben along with her son-in-law Sundarbhai went to Rajpipla hospital. Gajraben has stated that the deceased Bhavnaben and accused no.1 Kalidas were studying with her in Navdurga High School.

8.2 In the cross-examination, Gajraben has admitted that before coming to the court she had a discussion with Champaben. She has also admitted in the cross examination that she had met Bhavnaben one-two months prior to the day the deceased had telephoned at her house. However, it is stated that the said fact was not told to the parents of the deceased. Gajraben has admitted that she was informed about the physical and mental harassment meted out to the deceased and subsequently the death of the deceased by Champaben the mother of the deceased Bhavnaben.

9. The prosecution has also examined Kalaben Dashrathbhai-PW 8 Exh. 22 who was later declared hostile. The prosecution thereafter examined Laxmanbhai Chunilal-

PW9, Chandubhai Bodkabhai-PW10, Dhansukhbhai Hirabhai-PW11, Harilal Fofabhai-PW12, Narsinhbhai Shanabhai-PW13 and Muljibhai Hirabhai-PW14 all of whom were witnesses to panchnamas. The aforesaid witnesses were later on declared hostile.

10. Finally, the prosecution has examined Dr. Nirav Subhashchandra Gandhi working as Medical Officer at Civil Hospital, Rajpipla. He has stated that on 12.07.2002, while he was on duty at Civil Hospital, Rajpipla, at around 1115 hours the dead body of the deceased Bhavnaben was brought for post mortem by Police Constable Rameshbhai Bhukhanbhai. The post mortem was therefore conducted by Dr. Nirav alongwith panel doctor Dr. C.S Mandloi from Primary Health Centre, Sisodra. The said postmortem began at around 1335 hours and was completed at around 1550 hours.

10.1 It is stated that the dead body was of a lady aged around 18 years who had worn a blue coloured kurta and brown coloured petticoat. She was having five bangles in both the hands, had a gold nose ring, and the petticoat had withered with foecal passout. The body was average built and cold at the time of postmortem. It is also stated that both the eyes of the dead body were semi

open, the mouth was semi open and the tongue was inside the mouth. There was a white frothy secretion from the mouth and nose. The abdomen was slightly bulged and it appeared to have a pregnancy of about 28 weeks. However, the heart of the foetus had stopped functioning. The injuries stated to be present on the dead body of the deceased are as under:

(i)Abrasion of about 4 inches present over left side of breast below the left nipple.

(ii)A brown coloured and perchment like abrasion present just above the sternum.

(iii)A brown coloured and perchment like abrasion present over left side of neck.

(iv)A vertical abrasion, dark brown in colour and about 3 inches x 2 inches present on the mid of back.

(v)Bleeding absent.

11. It is stated that there was no fracture present but the brain, both the lungs and the lung walls were congested. There was frothy secretion present in the trachea. The heart was congested and the cavities were filled with dark coloured blood. There were half-digested food particles in the small and large intestines. The liver, kidney, spleen were found to be

congested and the urinary bladder was empty. The uterus was found to be enlarged and containing dead male foetus. The liver, spleen, kidney, lung and heart were collected in bottle no.1. The stomach of the deceased with its contents and small intestine with its contents were collected in bottle no.2. The blood samples of the deceased, accused no.1-Kalidas Vasava and the foetus were collected in bottle no. 3 and the body of dead male foetus with preservative was kept in bottle no.4. The doctors after the postmortem opined preliminarily that the cause of death of deceased was cardio-respiratory failure due to ingestion of some poison.

11.1 In the cross-examination, Dr. Nirav has stated that the person could not have died due to the outer physical injuries present on the body at the time of postmortem. The death has occurred due to intake of some poisonous drugs which can also be either by way of presence of the poison in the foodgrain on which such poisonous chemical is sprayed.

12. The prosecution has further examined Balirambhai Chibabhai Vasava-PW16 Ex.38, the person who has registered the death of the deceased informed by Champaben the grandmother-in-law of the deceased. It is

stated that he has registered the incident of death under Section 174 of Cr.P.C as Accidental Death No. 28/2000. The prosecution has also examined Anopsinh Himmatsinh Parmar-PW17 Ex. 40 who was incharge of the Rajpipla Police Station on the day the complaint was lodged by the father of the deceased i.e 13.07.2002 and arrested Kalidas and thereafter recorded the statement of Champaben the mother of the deceased.

13. Thereafter, Punambhai Chhanabhai Barda-PW18 Ex. 44 the officer who conducted the entire inquiry was examined by the prosecution. It is stated that he went to the spot of the incidence, prepared inquest panchnama, panchnama of the place of incidence and also collected various materials such as mud containing vomit of the deceased, bottle containing poison etc. It is also stated that the statements of the parents of the deceased were also taken and thereafter the case was registered as C.R. No. 119/2002 under sections 498(A), 306 and 114 of Indian Penal Code and was sent for further investigation to Police Inpector, Rajpipla. He has admitted that the names of the accused were not mentioned in the panchnamas done prior to the filing of the complaint. He has, however, supported the case of the prosecution. The prosecution has finally examined Bhagabhai Ranjitsinh

Ganava PW-19 who prepared the charge sheet after completion of inquiry.

14. Learned advocate appearing for the appellants has contended that there is no direct evidence to connect any of the accused with the alleged offence. She has contended that no reliable and cogent evidence is brought on record to prove that the accused are in any way party to the commission of the alleged offence under section 498A except bare words of the mother of the deceased and the deceased had not even mentioned about the alleged torture meted out on her to her friend Gajraben Rameshbhai.

14.1 She has also submitted that the alleged incident had taken place in the evening in the absence of any of the accused and therefore there is no material on record to prove that any cause has arisen so as to drive the deceased to commit suicide thereby making the accused liable to be punished under section 306 of the Indian Penal Code. Ms Mansuri has submitted that in that view of the matter no case is made out as alleged and that the prosecution has failed to prove any case against the appellants, the punishment is required to be quashed and set aside.

15. Mr K.T Dave, learned APP appearing for the State has submitted that the order of the trial court is just and proper. He has submitted that the trial court has gone into the evidence in detail and has come to a conclusion that the appellants are guilty of the alleged offence and therefore has awarded the sentence which is in accordance with law. He has further submitted that, therefore, no case is made out for interference in the appeal.

16. Heard learned advocates appearing for the parties at length. On appreciation of evidence, it is found that the factum of the deceased taking poisonous drug is not in dispute. However, neither the presence of the accused nos. 1, 2 & 3 at the scene of the offence nor the case that the accused have in any way helped or compelled the deceased to consume poison is established by the prosecution. Even the case of receiving telephone calls from the deceased wherein she mentioned about the atrocities inflicted upon her inspires any confidence in us inasmuch as any mother after receiving a call from her daughter after a long period of about one year and four months would certainly inform her husband(father of the deceased) about the same. In a case where the phone call after such a long duration made by the daughter is with

regards to the harassment meted out to her, it would definitely persuade the mother to inform the father of the daughter about the same and to go and meet her/bring her home, more particularly, when a complaint for abduction was filed before the Rajpipla Police Station.

16.1 It is stated that the mother received calls on 10.07.2002 and 11.07.2002 from the deceased daughter and rationale thinking fails to point out as to why the mother of the deceased did not inform the father of the deceased about the calls received from the daughter after a gap of so many months. In this regards, it is also relevant to note that the distance between the parental and the marital house of the deceased is merely 14 kms which would also go to show that it would not have been impossible for the mother of the deceased to go to see her immediately if the story about the harassment and torture meted out on the deceased is true. In that view of the matter, this story does not seem to hold any water and therefore we are not inclined to accept the same.

17. The prosecution has also failed to bring out any case pointing out the involvement or the presence of the accused during the time of the commission of the offence. On the contrary, after taking poisonous drug if

the deceased has tried to walk out of the marital house then the statement of the grandmother-in-law of the deceased finds some support from the evidence if the same is connected with the statement of Gajraben, the friend of the deceased. Gajraben, in her statement has informed that she had heard the mother of the deceased informing the deceased that she would be sending Sonal, the younger sister of the deceased to the deceased's marital home which corroborates the say of the grandmother-in-law of the deceased about some family member of the deceased visiting their place. However, it is borne out that the statement of the said younger sister of the deceased has not been recorded by the police. In that view of the matter, there seems to be a failure on the part of the prosecution to put forward any evidence so as to corroborate their submissions.

18. The Sessions Court has relied upon the statements made by the witnesses who at later point of time turned hostile. However, in our opinion the view taken by the Sessions Court is not supported by cogent evidence which proves beyond reasonable doubt that the accused are in any way involved in the commission of the alleged offence inasmuch as for a period of almost one year and four months the deceased has not complained to anyone and not

even her friend Gajraben whom the deceased had met prior to about one-two months of the incident. In view of the fact that no evidence is brought on record to show the involvement of the accused in the commission of the alleged offence, this Court is of the opinion that the findings of the Sessions Court is required to be reversed.

19. In the premises aforesaid, the appeal is allowed. The order dated 27.11.2003 passed by the Additional Sessions Judge, Bharuch(4th Fast Track Court) at Rajpipla in Sessions Case No. 124 of 2002 whereby the appellants convicted for commission of offences punishable under Sections 306, 498-A and 114 Indian Penal Code are each sentenced to suffer R.I for ten years and fine of Rs. 2,000/- in default S.I for six months for having committed offence punishable under sections 306 read with 114 of Indian Penal Code as well as R.I for three years and fine of Rs. 1,000/- in default R.I for three months for having committed offence punishable under section 498-A read with 114 of Indian Penal Code is quashed and set aside. The accused, if not required in connection with any other case, shall be released forthwith. The bail bond given by the appellant no.3 stands released.

(ANIL. R . DAVE, J.)

(K.S. JHAVERI, J.)

Divya//